Supreme Court, U.S.
FILED
OCT 12 1999
OFFICE OF THE CLERK

No. 99-414

In The

Supreme Court of the United States

MIKE HATCH, ATTORNEY GENERAL OF MINNESOTA,

Petitioner,

v.

MINNESOTA TWINS PARTNERSHIP, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Minnesota Supreme Court

BRIEF OF THE STATES OF CALIFORNIA, CONNECTICUT, IOWA, LOUISIANA, MASSACHUSETTS, MICHIGAN, OKLAHOMA, PENNSYLVANIA, UTAH, WASHINGTON, AND WEST VIRGINIA AS AMICI CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

JAN GRAHAM
Utah Attorney General
*WAYNE KLEIN
Assistant Attorney General
160 East 300 South, 5th Floor
Salt Lake City, Utah 84111
(801) 366-0310

**Counsel of Record*

[Additional counsel on inside cover]

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

23pp

BILL LOCKYER
Attorney General of
California
1300 I Street, Suite 1740
Sacramento, CA 95814

RICHARD BLUMENTHAL
Attorney General of
Connecticut
110 Sherman Street
Hartford, CT 06105

THOMAS J. MILLER
Attorney General of Iowa
Hoover State Office
Building
Des Moines, IA 50319

RICHARD P. IEYOUB
Attorney General of
Louisiana
301 Main Street,
Suite 1250
Baton Rouge, LA 70801

THOMAS F. REILLY
Attorney General of
Massachusetts
One Ashburton Place
Boston, MA 02108

JENNIFER M. GRANHOLM
Michigan Attorney
General
P.O. Box 30212
Lansing, MI 48909

W.A. DREW EDMONDSON
Attorney General of
Oklahoma
2300 North Lincoln
Boulevard, Suite 112
Oklahoma City, OK 73015

D. MICHAEL FISHER
Attorney General of
Pennsylvania
15th Floor, Strawberry
Square
Harrisburg, PA 17120

CHRISTINE O. GREGOIRE
Attorney General of
Washington
1125 Washington Street
Olympia, WA 98504-0100

DARRELL V. MCGRAW, JR.
Attorney General of
West Virginia
State Capitol
1900 Kanawha Boulevard
East
Charleston, WV 25305

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE AMICI CURIAE 1

REASONS FOR GRANTING THE PETITION 3

I. THE TRILOGY DID NOT INVOLVE THE TYPE OF CONDUCT AT ISSUE IN THIS CASE 4

II. COLLUSION BY BASEBALL TEAM OWNERS OVER THE LOCATION OF FRANCHISES AND THE FUNDING OF STADIUMS IS A RECENT PHENOMENON MARKEDLY DIFFERENT FROM THE RESERVE SYSTEM 5

III. *STARE DECISIS* DOES NOT JUSTIFY EXTENDING THIS COURT'S BASEBALL DECISIONS TO COLLUSION BY BASEBALL TEAM OWNERS OVER THE LOCATION OF FRANCHISES AND THE FUNDING OF STADIUMS 10

CONCLUSION 17

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Federal Baseball v. National League, 259 U.S. 200 (1922) 4, 5, 11, 12, 13, 15

Finley v. Kuhn, 569 F.2d 527 (7th Cir. 1978) 8, 9, 16

Flood v. Kuhn, 407 U.S. 258 (1972) ..... *passim*

Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205 (1979) 2

Haywood v. National Basketball Ass'n, 401 U.S. 1204 (1971) 11

Los Angeles Memorial Coliseum Comm'n v. National Football League, 726 F.2d 1381 (9th Cir. 1984) 9

McCoy v. Major League Baseball, 911 F.Supp. 454 (W.D. Wash. 1995) 8

National Basketball Assoc'n v. SDC Basketball Club, Inc., 815 F.2d 562 (9th Cir. 1987) 10

National Collegiate Athletic Ass'n v. Board of Regents of Univ. of Okla., 468 U.S. 85 (1984) 10

New Orleans Pelicans Baseball, Inc. v. National Ass'n of Professional Baseball Leagues, Inc., 1994 WL 631144 (E.D. La. 1994) 8

North American Soccer League v. National Football League, 670 F.2d 1249 (2nd Cir. 1982) 10

Piazza v. Major League Baseball, 831 F.Supp. 420 (E.D. Pa. 1993) 5, 6, 8, 15, 16

Portland Baseball Club v. Kuhn, 491 F.2d 1101 (9th Cir. 1974) 8, 9, 16

TABLE OF AUTHORITIES – Continued

Page

Professional Baseball Schools and Clubs, Inc. v. Kuhn, 693 F.2d 1085 (11th Cir. 1982) 8

Radovich v. National Football League, 352 U.S. 445 (1957) 11

Toolson v. New York Yankees, 346 U.S. 356 (1952) 4, 5, 12, 13, 15

State Oil Co. v. Khan, 522 U.S. 3, 118 S.Ct. 275 (1997) 14

Union Labor Life Ins. Co. v. Pireno, 458 U.S. 119 (1982) 2

United States v. International Boxing Club, 348 U.S. 236 (1955) 11

STATE CASES

Butterworth v. National League of Professional Baseball Clubs, 644 So.2d 1021 (Fla. 1994) 7, 8, 16

Libertarian Party of Wisconsin v. Wisconsin, 546 N.W.2d 424 (Wis. 1996) 8

Minnesota Twins Partnership v. Minnesota by Hatch, 592 N.W.2d 847 (Minn. 1999) 7, 8, 9

Morsani v. Major League Baseball, 663 So.2d 653 (Fla. Dist. Ct. App. 1995) 7, 8, 16

Wisconsin v. Milwaukee Braves, 144 N.W.2d 1 (Wis. 1996) 7

STATE CONSTITUTIONS

Ariz. Const. art. XIV, § 15 2

Ga. Const. art. 3, § 6, ¶ 5(c) 2

TABLE OF AUTHORITIES – Continued

Page

Idaho Const. art. 11, § 18 2

Ky. Const. § 198 2

Md. Const. art. 41 2

Miss. Const. art. VII, § 198 2

Mont. Const. art. XV, § 20 2

N.M. Const. art. IV, § 38 2

Okla. Const. art. II, § 32, art. IV, § 44 2

S.D. Const. art. XVII, § 20 2

Tenn. Const. art. 1, § 22 2

Tex. Const. Ann. art. 1, § 26 2

Utah Const. art. XII, § 20 2

Wash. Const. art. XII, § 22 2

Wyo. Const. art. 1, § 30, art. 10, § 8 2

STATUTES

Curt Flood Act of 1998, Pub. L. 105-297, 112 Stat. 2824 (15 U.S.C. § 27a) 9, 13, 14, 15

Ark. Code Ann. § 4-75-202 (Michie 1996) 2

Cal. Bus. & Prof. Code § 17001 (West 1997) 2

Colo. Rev. Stat. §§ 6-2-102, 6-4-102 (1997) 2

Del. Code Ann. tit. 6, § 2101 (1997) 2

D.C. Code Ann. § 28-4501(b) (1996) 2

TABLE OF AUTHORITIES – Continued

Page

Fla. Stat. Ann. § 542.16 (West 1997) 2

740 Ill. Comp. Stat. § 10/2 (West 1993) 2

Mass. Gen. Laws Ann. ch. 93, § 1 (West 1997) 2

Mont. Code Ann. § 30-14-201 (1998) 2

Nev. Rev. Stat. § 598A.021 (1994) 2

N.J. Stat. Ann. § 56:9-1 (West 1989) 2

Or. Rev. Stat. § 646.715 (1988) 2

R.I. Gen. Laws § 6-36-2 (1992) 2

Tex. Bus. & Com. Code Ann. § 15.04 (West 1987) 2

Utah Code Ann. §§ 76-10-912, 923 (1999) 2

Vt. Stat. Ann. tit. 9, § 2451 (1993) 2

Va. Code Ann. § 59.1-9.2 (Michie 1998) 2

Wis. Stat. Ann. § 133.01 (West 1989) 2

OTHER MATERIALS

H.R. Rep. No. 2002, 82d Cong., 2d Sess. (1952) 13

Robert M. Jarvis, *When the Lawyers Slept: The Unmaking of the Brooklyn Dodgers*, 74 Cornell L. Rev. 347 (1989) (book review) 7

Marianne McGettigan, *The Curt Flood Act of 1998: The Players' Perspective*, 9 Marq. Sports L.J. 379 (1999) 12

TABLE OF AUTHORITIES – Continued

Page

Scott Miller, *Twins' Bell Discounts Disbanding: Some Owners Talking About Consolidation*, St. Paul Pioneer Press, Aug. 28, 1999, at F1 6

Jeffrey S. Moorad, *Major League Baseball's Labor Turmoil: The Failure of the Counter-Revolution*, 4 Vill. Sports & Ent. L.J. 53 (1977) 9

Jeff Pearlman and Stephan Cannella, *Shrink the Bigs?*, Sports Illustrated, Aug. 30, 1999 at 64 6

James P. Quirk & Rodney Fort, *Hard Ball: The Abuse of Power in Pro Team Sports* (1999) 1

Michael Eric Ross & Sashe Dimanin Dimitroff, *Whose Field of Dreams?: Antitrust Relief Against Restrictions on the Sale or Relocation of Major League Teams*, Antitrust Bull., Sept. 22, 1997 (also found at 1997 WL 12280198 * 1) 6

Jay Weiner, *Some Owners Want to Fold, Rather Than Hold, Twins*, Minneapolis Star Tribune, Aug. 31, 1999, at C1 6

Brian F. Zeck, Note, *Is This the Bottom of the Ninth for Baseball's Antitrust Exemption? A Proposed Removal of the Exemption and Analysis of Player Restraints in an Exemption-Free Environment*, 43 Clev. St. L. Rev. 693 (1995) 13

INTEREST OF THE AMICI CURIAE

The eleven Amici States listed on the front cover, by their attorneys general, file this brief as friends of the Court in support of the petition by the State of Minnesota. The attorneys general, as the chief law enforcement officials for their states, are responsible for investigating potential violations and enforcing antitrust laws in each of their states. This gives the Amici States a strong interest in ensuring that they have the ability to investigate collusive conduct by professional sports franchises – including baseball team owners – that may violate state antitrust laws. Of particular concern to the Amici States and their taxpayers are attempts by professional sports teams to force the spending of public monies on projects that benefit private parties by threatening to conspire with others not only to leave a state, but also to prevent other teams from taking their place. The reasoning of the lower court's decision leaves the attorneys general virtually powerless to combat such coercion.

Since 1990, at least ten cities in as many states have used public funding to build specialized baseball stadiums costing $2.3 billion. The public funding component for these stadiums has ranged from 64% to 100%. *See* James P. Quirk & Rodney Fort, *Hard Ball: The Abuse of Power in Pro Team Sports* 218-225 (1999).

In the antitrust arena the state attorneys general do more than just enforce the law. Often they have affirmative responsibility to promote free-market behavior.[1] To

---

[1] State policy promoting free markets is found both in state constitutions and statutes. For example: "It is the policy of the

accomplish this, it is vital that the courts narrowly construe exemptions that can shield collusive, market-distorting behavior.[2] The free market is advanced best when the antitrust laws are applied equally to similarly situated entities, expansions of any exemptions are fully vetted by

---

state of Utah that a free market system shall govern trade and commerce in this state to promote the dispersion of economic and political power and the general welfare of all the people." Utah Const. art. XII, § 20. Similar constitutional prohibitions against trusts and monopolies are found at Ariz. Const. art. XIV, § 15; Ga. Const. art. 3, § 6, ¶ 5(c); Idaho Const. art. 11, § 18; Ky. Const. § 198; Md. Const. art. 41; Miss. Const. art. VII, § 198; Mont. Const. art. XV, § 20; N.M. Const. art. IV, § 38; Okla. Const. art. II, § 32, art. IV, § 44; S.D. Const. art. XVII, § 20; Tenn. Const. art. 1, § 22; Tex. Const. Ann. art. 1, § 26; Wash. Const. art. XII, § 22; Wyo. Const. art. 1, § 30, art. 10, § 8.

Statutorily expressed legislative purposes often express a mandate "to foster and encourage competition[.]" *See* Ark. Code Ann. § 4-75-202 (Michie 1996); Cal. Bus. & Prof. Code § 17001 (West 1997); Colo. Rev. Stat. §§ 6-2-102, 6-4-102 (1997); Del. Code Ann. tit. 6, § 2101 (1997); D.C. Code Ann. § 28-4501(b) (1996); Fla. Stat. Ann. § 542.16 (West 1997); 740 Ill. Comp. Stat. § 10/2 (West 1993); Mass. Gen. Laws Ann. ch. 93, § 1 (West 1997); Mont. Code Ann. § 30-14-201 (1998); Nev. Rev. Stat. § 598A.021 (1994); N.J. Stat. Ann. § 56:9-1 (West 1989) (*see* Historical Note containing full title of the act); Or. Rev. Stat. § 646.715 (1988); R.I. Gen. Laws § 6-36-2 (1992); Tex. Bus. & Com. Code Ann. § 15.04 (West 1987); Utah Code Ann. §§ 76-10-912, 923 (1999); Vt. Stat. Ann. tit. 9, § 2451 (1993); Va. Code Ann. § 59.1-9.2 (Michie 1998); Wis. Stat. Ann. § 133.01 (West 1989).

[2] The Court has taught that antitrust exemptions are to be narrowly construed. *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 231 (1979) (citing other Supreme Court cases affirming the same principle). *See Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 126 (1982) (explaining that the principle applies equally to implicit exemptions and express statutory exemptions).

the public legislative process, and exemptions that are not economically justified are limited in scope. The lower court's decision undermines these principles with respect to one key player in the professional sports industry.

REASONS FOR GRANTING THE PETITION

The problems of taxpayer extortion that states and localities throughout the country presently face as a result of professional baseball owners' anticompetitive conduct barely existed when this Court decided *Flood v. Kuhn*, 407 U.S. 258 (1972), and were not before the Court in that case. *Flood* addressed baseball's reserve system, which limited baseball players' ability to market their services among the teams. Baseball owners' efforts to extort publicly-funded stadiums impose entirely different economic consequences. Taxes must be raised, or other services cut, in order to pay for the new stadiums; and when the government does not give in, and the team departs to a different state, the economic condition of cities and communities is changed overnight. This Court's decision in *Flood* – that baseball's reserve system remains exempt from both federal and state antitrust laws – should not be construed to govern the very different issue of the application of antitrust laws to a very dissimilar aspect of the multi-billion dollar business of baseball.

The question presented in this case is not whether *Flood* and its predecessor decisions should be overruled. Rather, it is whether this trilogy of cases should be interpreted to exempt conduct that has not been before this

Court. Because some lower courts, such as the Minnesota Supreme Court, erroneously interpret *Flood* as exempting every facet of baseball from the antitrust laws, review by this Court is needed.[3]

I. THE TRILOGY DID NOT INVOLVE THE TYPE OF CONDUCT AT ISSUE IN THIS CASE

The genesis of professional baseball's unique antitrust exemption was the Court's 1922 conclusion that "exhibitions of baseball . . . are purely state affairs." *Federal Baseball v. National League*, 259 U.S. 200, 208 (1922). Accordingly, held the Court, the baseball conduct at issue did not involve interstate commerce and, therefore, was not within the purview of the federal antitrust laws. *Id.* at 208-09. Although later decisions by the Court thoroughly undermined the reasoning of *Federal Baseball*, the Court reaffirmed that decision twice on the grounds of *stare decisis*. *Toolson v. New York Yankees*, 346 U.S. 356 (1952); *Flood*, 407 U.S. 258. Together, this baseball trilogy constitutes the Court's baseball exemption jurisprudence.

In *Flood*, the Court set forth the issue before it in simple, clear terms: "For the third time in 50 years, the Court is asked specifically to rule that professional baseball's reserve system is within the reach of the federal antitrust laws." 407 U.S. at 259. As the *Flood* Court noted,

---

[3] The Petition by the State of Minnesota demonstrates that state supreme courts and lower federal courts are divided over the breadth of the antitrust exemption for baseball created by this Court. The Amici States agree that this Court should grant review to resolve this confusion among lower courts, and will not repeat that argument.

and Minnesota's petition demonstrates, each of the trilogy cases involved the reserve clause. Pet. at 4-5.[4] The trilogy says nothing clear about the states's role in investigating conduct outside the reserve system or the type of conduct at issue in this and other recent cases.

II. COLLUSION BY BASEBALL TEAM OWNERS OVER THE LOCATION OF FRANCHISES AND THE FUNDING OF STADIUMS IS A RECENT PHENOMENON MARKEDLY DIFFERENT FROM THE RESERVE SYSTEM

Over the past decade it has become difficult to open a newspaper's sports section without reading another article about a sports team threatening to move away if the city or state does not provide public funds to the team.[5] Such threats – viewed by many public officials and taxpayers, no doubt, as extortion – become all the more effective if the owners can ensure that no other teams will move into town to replace departing franchises. They also become more effective if owners limit the number of teams so that there always remains another city to which owners can plausibly threaten to move if the city or state does not hand over more money.

---

[4] *Federal Baseball* and *Flood* both dealt with the reserve clauses of major league teams. 259 U.S. at 207; 407 U.S. 259 n. 3. The consolidated cases decided in *Toolson* all involved minor league reserve clauses. 346 U.S. at 362-64 (Burton and Reed, JJ., dissenting). The most extensive analysis of the reserve clause underpinnings of the trilogy is found at *Piazza v. Major League Baseball*, 831 F.Supp. 420 (E.D. Pa. 1993).

[5] The variety and recent frequency of threatened moves are well catalogued in Minnesota's petition. Pet. at 7-11.

There is strong reason to suspect that baseball owners are engaged in precisely that conduct. A very recent news article revealed discussions by baseball team owners to eliminate two to four teams and reallocate television revenues among the remaining teams. This action also reportedly would increase the team owners' ability to coerce Minnesota and other cities to publicly fund new stadium requests. Jeff Pearlman and Stephan Cannella, *Shrink the Bigs?*, Sports Illustrated, Aug. 30, 1999 at 64. Plans to reduce the number of teams were also recently reported by Jay Weiner, *Some Owners Want to Fold, Rather Than Hold, Twins*, Minneapolis Star Tribune, Aug. 31, 1999, at C1; Scott Miller, *Twins' Bell Discounts Disbanding: Some Owners Talking About Consolidation*, St. Paul Pioneer Press, Aug. 28, 1999, at F1.

Baseball owners have the unique ability to enforce their threats that no other team will replace departing clubs. Bylaws of the two leagues require approval of the majority of team owners before a club can relocate. Michael Eric Ross & Sashe Dimanin Dimitroff, *Whose Field of Dreams?: Antitrust Relief Against Restrictions on the Sale or Relocation of Major League Teams*, Antitrust Bull., Sept. 22, 1997 (also found at 1997 WL 12280198 * 1) (explaining that National League teams must obtain approval of three-fourths of other National League teams *and* a majority of American League clubs in order to move to a new city, while American League teams require only supermajority approval from other teams in its own league).

As a result, a team's threat of preventing the arrival of any replacement team can be carried out effectively. *See Piazza*, 831 F.Supp. at 422 (team required to submit proposed relocation to major league baseball for

approval); *Butterworth v. National League of Professional Baseball Clubs*, 644 So.2d 1021, 1022 (Fla. 1994) (baseball owners voted against approval of team purchase and relocation); *Wisconsin v. Milwaukee Braves*, 144 N.W.2d 1, 5-7 (Wis. 1996) (major league baseball team cannot move to Milwaukee without permission of one of the leagues).

The investigation of the Twins in the instant case was predicated on the use of this very threat. The Twins and then-acting Baseball Commissioner Bud Selig warned state officials that the team would leave and no other major league team would be permitted to move to Minnesota unless a publicly funded stadium were constructed. *See Minnesota Twins Partnership v. Minnesota by Hatch*, 592 N.W.2d 847, 849, 851 (Minn. 1999) (Pet. App. at 2) ("potential boycott of Minnesota by Major League Baseball"). The use of this type of explicit threat was described in *Morsani v. Major League Baseball*, 663 So.2d 653, 656 (Fla. Dist. Ct. App. 1995) ("These threats were that plaintiffs would never own an interest in a major league baseball team, and that there would never be a major league baseball team in the Tampa Bay area, unless the plaintiffs assigned the [team purchase] contract as demanded. . . . ").

Disputes over team relocations and public funding of stadiums have been the dominant legal squabbles since *Flood*. Whereas team relocation disputes were rare before *Flood*,[6] they have exploded in frequency since 1972,

---

[6] *See Wisconsin v. Milwaukee Braves*, 144 N.W.2d at 8; Robert M. Jarvis, *When the Lawyers Slept: The Unmaking of the Brooklyn Dodgers*, 74 Cornell L. Rev. 347, 347-48 (1989) (book review) (discussing move of the Dodgers from Brooklyn to Los Angeles in 1957).

mostly in the last six years. *E.g., Professional Baseball Schools and Clubs, Inc. v. Kuhn*, 693 F.2d 1085 (11th Cir. 1982); *New Orleans Pelicans Baseball, Inc. v. National Ass'n of Professional Baseball Leagues, Inc.*, 1994 WL 631144 (E.D. La. 1994); *Piazza*, 831 F.Supp. at 421; *Minnesota Twins*, 592 N.W.2d at 849, Pet. App. at 2; *Libertarian Party of Wisconsin v. Wisconsin*, 546 N.W.2d 424, 428 (Wis. 1996); *Morsani*, 663 So.2d at 654; *Butterworth*, 644 So.2d at 1022.[7] In contrast, there has been only one post-*Flood* reserve clause case. *Finley v. Kuhn*, 569 F.2d 527 (7th Cir. 1978).[8]

The nature of current baseball disputes is far different from the trilogy's reserve clause controversies. The reserve clause exemption affects only the teams and free agency rights of baseball players. But, team sales involve hundreds of millions of dollars. Team relocations dramatically alter the stature of the cities and states gaining or losing a home-town team – especially when the losing city is powerless to obtain a replacement team. Pressure for public funding of stadiums risks the spending of hundreds of millions of dollars of public monies on private projects.

Part of the reason for this shift in the nature of cases is the abolition of the reserve clause through collective

---

[7] *See also Portland Baseball Club v. Kuhn*, 491 F.2d 1101 (9th Cir. 1974) (dispute over compensation to minor league teams displaced when two teams were added in an expansion of major league baseball).

[8] *See also McCoy v. Major League Baseball*, 911 F.Supp. 454 (W.D. Wash. 1995) (fans and businesses sued major league baseball to halt labor practices that had led to the 1994 baseball strike).

bargaining[9] and the passage of the Curt Flood Act of 1998.[10] The more significant reason for the prevalence of these new types of cases, however, seems to be aggressive, expansive arguments by baseball owners that the baseball exemption is virtually unlimited. Emboldened by appeals court rulings in *Finley* and *Portland Baseball*, the owners continue to argue that baseball qualifies for a blanket exemption from antitrust laws. *See Minnesota Twins*, 592 N.W.2d at 851, Pet. App. at 9. If some lower courts continue to hold that baseball's antitrust immunity is unlimited, it should not be surprising that team owners look for other ways to assert, and exploit, their monopoly power.

Other sports leagues are subject to antitrust laws in franchise relocation and ownership issues. Antitrust laws simply do not permit teams playing sports other than baseball to accomplish what baseball owners attempt – under the guise of a broad antitrust exemption. *See, e.g., Los Angeles Memorial Coliseum Comm'n v. National Football League*, 726 F.2d 1381 (9th Cir. 1984) (upholding jury's finding that NFL violated antitrust laws by denying permission for the Raiders to move from Oakland to Los

---

[9] *See Finley*, 569 F.2d at 536 & n.26 (discussing 1975 and 1976 changes to baseball's reserve clause); Jeffrey S. Moorad, *Major League Baseball's Labor Turmoil: The Failure of the Counter-Revolution*, 4 Vill. Sports & Ent. L.J. 53, 54, 64-66 (1977) (discussing the history of player labor disputes and events leading to elimination of the reserve clause).

[10] Pub. L. 105-297, 112 Stat. 2824 (amending the Clayton Act and codified at 15 U.S.C. § 27a). As discussed, *infra* at 14, this act eliminated any special antitrust exemption for major league baseball labor issues.

Angeles). *See also, National Basketball Assoc'n v. SDC Basketball Club, Inc.*, 815 F.2d 562 (9th Cir. 1987) (in a case challenging the NBA's three-quarters approval rule for franchise relocation under antitrust laws, fact finder should decide the reasonableness of any restraints); *North American Soccer League v. National Football League*, 670 F.2d 1249 (2nd Cir. 1982) (invalidating rule forbidding franchise owners from owning other professional sports teams under rule of reason analysis).

III. *STARE DECISIS* DOES NOT JUSTIFY EXTENDING THIS COURT'S BASEBALL DECISIONS TO COLLUSION BY BASEBALL TEAM OWNERS OVER THE LOCATION OF FRANCHISES AND THE FUNDING OF STADIUMS

The blatant output restrictions and cartel-like collusion in which the baseball industry is allegedly engaging would not be tolerated in any other sport, let alone any other industry. "Restrictions on price and output are the paradigmatic examples of restraints of trade that the Sherman Act was intended to prohibit." *National Collegiate Athletic Ass'n v. Board of Regents of Univ. of Okla.*, 468 U.S. 85, 100, 107-08 (1984) (quoting *Standard Oil Co. v. United States*, 221 U.S. 1, 52-60 (1911)). Yet the baseball industry insists, and some lower courts have held, that this Court's decisions make such conduct perfectly legal. A closer review of *Flood* and the principles of *stare decisis* shows that this is not the case.

The Court in *Flood* could not uphold baseball's reserve system on economic or statutory construction grounds, for the system plainly violated the terms of the Sherman Act – as conclusively demonstrated by the

Court's rulings that similar systems used by other professional sports leagues violated the Act. *See Haywood v. National Basketball Ass'n*, 401 U.S. 1204 (1971); *Radovich v. National Football League*, 352 U.S. 445 (1957); *United States v. International Boxing Club*, 348 U.S. 236 (1955).[11] The *Flood* decision was based solely on *stare decisis*. The issue, then, is whether *stare decisis* can be applied sensibly to bar application of the antitrust laws to baseball owners' efforts to coerce public officials and taxpayers to fund new stadiums and related expenditures. For several reasons, it cannot.

First, the original justification for baseball's exemption would *permit* states to enforce their antitrust laws to protect themselves from collusive actions by owners. As noted, *Federal Baseball* was premised on the notion that baseball was strictly a local activity that did not bear on interstate commerce. States are, of course, empowered to regulate local activities and do so in any number of ways. It would be ironic and illogical for an exemption originating in the notion that baseball's reserve clauses are a local concern to be transmuted – in the name of *stare decisis* alone – into a rule barring states from protecting themselves against a wide range of wrongful business conduct directed at the states.

To be sure, in *Flood* the Court held not only that baseball's reserve system was beyond the reach of *federal* antitrust law, but that it also was beyond the reach of *state*

---

[11] These cases are discussed by Minnesota. Pet. at 4.

antitrust law. 407 U.S. at 284-85. Relying upon the reasoning of the lower courts, the Court found that state regulation of baseball's reserve system would burden interstate commerce. *Id.* at 284 (internal citations omitted). That holding, however, had only a limited impact on state interests. It is one thing to hold that state antitrust laws cannot be used to improve the lot of Curt Flood and other ballplayers; it is another thing altogether to hold that state antitrust laws cannot be used to protect the states' own fiscs and the well-being of their communities. The Court in *Flood* did the former; it did not do the latter. Because *stare decisis* alone is an insufficient federal policy to justify preemption of state laws, principles of federalism dictate that the Court at the least narrowly construe the judicially-created exemption for baseball and thereby reduce the displacement of state laws.

Second, *stare decisis* is grounded in large part on reliance interests. *See Toolson*, 346 U.S. at 357, *quoted in Flood*, 407 U.S. at 273. It is difficult, however, to see how application of the antitrust laws to the conduct alleged by Minnesota would impose hardship on baseball's owners. The existence of a reserve clause exemption does not justify owners' claims of reliance on a broad exemption for the very modern issues of team relocations and public stadium coercion. Today's big business baseball, with its national television contracts, thirty franchises around the country, multimillion dollar salaries, and specially constructed stadiums, bears little resemblance to the eight teams described by Justice Holmes in *Federal Baseball*. *See* Marianne McGettigan, *The Curt Flood Act of 1998: The Players' Perspective*, 9 Marq. Sports L.J. 379, 389 (1999) (questioning how today's corporate baseball owners such as "Fox, Disney, Nintendo, Microsoft, the Chicago

Tribune and Time-Warner" can claim undue hardship in obeying antitrust laws).

Professional sports other than baseball have survived, and thrived, without an antitrust exemption. Baseball surely can do the same with an antitrust exemption limited to the reserve system. *See* Brian F. Zeck, Note, *Is This the Bottom of the Ninth for Baseball's Antitrust Exemption? A Proposed Removal of the Exemption and Analysis of Player Restraints in an Exemption-Free Environment*, 43 Clev. St. L. Rev. 693, 704 (1995) (concluding that baseball would not be significantly harmed by the removal of the exemption). Professional baseball has prospered after the reserve clause was removed through collective bargaining and the Curt Flood Act. It can be expected to continue to do so even if the scope of its antitrust exemption is not as broad as it claims.

Third, the Court emphasized in *Toolson* and *Flood* that Congress declined to legislatively overrule *Federal Baseball*. But the conduct of the baseball industry at issue here was not the behavior the Court considered in *Federal Baseball* and then placed in Congress's lap. Congress's inactivity with respect to the reserve system may have been relevant to the continuing vitality of a reserve system antitrust exemption. It is of little or no relevance with respect to the expansive course of conduct only recently undertaken by baseball owners.[12]

---

[12] Moreover, Minnesota's Petition, Pet. at 21 n.34, notes that the 1952 House Report relied upon by the Court in *Flood* to keep the reserve system exemption also condemns a blanket exemption for baseball. 1952 House Report on Monopoly Power, H.R. Rep. No. 2002, 82d Cong., 2d Sess. at 230 (1952).

Furthermore, this Court has recently reaffirmed that "the general presumption that legislative changes should be left to Congress has less force with respect to the Sherman Act in light of the accepted view that Congress 'expected the courts to give shape to the statute's broad mandate by drawing on common-law tradition.' " *State Oil Co. v. Khan*, 522 U.S. 3, ___, 118 S.Ct. 275, 284 (1997) (quoting *National Society of Professional Engineers v. United States*, 435 U.S. 679, 688 (1978)). Recent events confirm that this is Congress's expectation with respect to baseball's antitrust exemption.

Until the 1994-95 baseball strike and cancellation of the 1994 World Series, Congress had not taken up the Court's invitations to determine whether baseball should retain an antitrust exemption for the reserve clause. Even then, the Curt Flood Act addressed only labor issues. The statute explicitly provides that it does not affect the application *vel non* of the antitrust laws to any other aspect of baseball. 15 U.S.C. § 27a(b). Moreover, as Minnesota shows, Pet. at 22-25, the sponsors of the Act and the President stated that they were leaving the determination of the remaining scope of any baseball antitrust exemption to the courts.[13]

---

[13] Congress's apparent belief that baseball's antitrust exemption is restricted to reserve clause issues is reinforced by a bill introduced in Congress on May 4, 1999, to be called the Stadium Financing and Franchise Relocation Act of 1999. S. 952, 106th Cong. (1999). This bill proposes an antitrust exemption relating to the relocation of professional sports teams, on certain conditions. The bill explicitly applies to football leagues and major league baseball clubs. *Id.* at § 1(a)(2). If the Minnesota Supreme Court and certain of the federal courts are correct that there already is a broad antitrust exemption for baseball, one

The Amici States do not contend that the interpretation of *Flood* and the application of *stare decisis* proposed above are ineluctable. However, a narrow interpretation of the baseball exemption is not only proper, but a crucial aid in protecting other government interests: safeguarding the economic well-being of local government, ensuring that the free market system can operate to constrain collusive behavior that otherwise will harm consumers, and permitting investigations of suspected violations. Congress seems to understand – and intend – that the exemption created by this Court applies only to the reserve clause; lower courts have not taken this message from the trilogy.

Three strikes (*Federal Baseball*, *Toolson* and *Flood*) may have meant that legal challenges to baseball's reserve system struck out. But challenges to collusive extortion of the public represent a new batter that should be given its turn at the plate. Unless this Court clarifies the narrow scope of its baseball decisions, these challenges cannot be heard.

Reserve clause cases are unlikely to come before this Court again because collective bargaining and the Curt Flood Act have eliminated legal disputes on this question. Future lower court cases likely will involve output limitations, franchise relocations, and public funding of stadiums. These cases will have difficulty reaching this Court. The pattern of lower court baseball cases is that baseball owners do not appeal losses. In *Piazza*, baseball owners lost at the trial court and filed no appeal. In

---

that permits collusion relating to team relocations, this bill's application to baseball would be unnecessary.

Butterworth and *Morsani*, the owners won at the trial court but lost when the plaintiffs appealed. The owners did not seek further review. The federal court of appeals cases finding a broad exemption all occurred because baseball owners prevailed at the trial court and the plaintiffs appealed. *Finley* and *Portland Baseball* both affirmed trial court rulings in favor of baseball owners.

This pattern, and the fact that private parties may lack the motivation or resources to even raise this issue in courts, means this issue is difficult to bring before the Court. Whether the exemption created in the baseball trilogy also broadly immunizes cartel-like behavior on output restrictions, team relocations, and coerced public funding of stadiums can be raised and definitively answered by this Court only in cases such as this one.[14]

---

[14] "Whether the exemption is to be narrowly construed, as found by the *Piazza* court, or broadly construed, as determined by other federal courts, is a question that can be finally answered only by the United States Supreme Court." *Butterworth*, 644 So.2d at 1026 (Overton, J., specially concurring).

CONCLUSION

This Court should grant the State of Minnesota's Petition for a Writ of Certiorari to define the scope of baseball's unique antitrust exemption.

Respectfully submitted,

JAN GRAHAM
Utah Attorney General
*WAYNE KLEIN
Assistant Attorney General
160 East 300 South, 5th Floor
Salt Lake City, Utah 84111
(801) 366-0310

* *Counsel of Record*

October 11, 1999